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IN THE

Supreme Court of the United States

October Term, 1951

No. 543

ON LEE, Petitioner

vs.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

HENRY K. CHAPMAN
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The within reply Brief is being submitted solely for the purpose of correcting certain errors contained within the Brief submitted by the Solicitor General in opposition to the within application for certiorari.

Taking them in chronological order as they appear in the aforementioned Brief the first item is found within the footnote "5" appearing at page 10. There it is stated that defense counsel objected to the testimony of Agent Lee concerning the broadcast of the conversation had between Chin Poy and petitioner solely on the ground that it related to another transaction and reference is made to pages 106-8 of the Record. A reading of the Record discloses that this is in error and that at page 104 a general objection was made by counsel for the petitioner in the trial court. After Agent Lee testified concerning Chin

Poy's entry into the combined home and place of business of the petitioner, we find the following in the Record near the bottom of page 104:

“Q. Only customers. A. Only customers that came in and out. I overheard their conversation and On Lee admitted—

Mr. Rosenthal: That is objected to.”

In arguing that no harm was committed by the admission of the radio conversation overheard while Chin Poy was in the combined place of business and home of the petitioner the Government states at pages 12 and 13 of their opposing Brief, that the subsequent admission alleged to have been made by petitioner to Chin Poy, while they were on the street, that he was an agent for a syndicate, negates any argument in opposition to the admission of the other testimony and reference is made to pages 113-4 of the Record. A careful reading of these pages discloses that the only time in his testimony that Agent Lee claimed petitioner had made an admission or referred to the transaction resulting in his arrest was at the first meeting between Chin Poy and the petitioner held in the petitioner's combined home and place of business.

When Agent Lee commenced testifying concerning the second alleged overheard conversation, which it is claimed took place on a street in New York City, we find objection being made by trial counsel and the following appears in the Record:

“Mr. Rosenthal: The second conversation is not claimed, I do not believe, to have anything to do with the transaction charged in this indictment.”

The Court: I understand that” (R. 113-4).

It is, therefore, respectfully submitted that it is apparent that even if it were to be believed that the petitioner made

an admission on the street to Chin Poy that he was an agent for a syndicate, it did not in any manner refer to the transaction of January 22nd, 1950, which was the basis of the arrest and prosecution and no verdict of the jury could be claimed to be predicated upon this testimony.

It is further urged in the Brief submitted in opposition to the within petition that since the alleged conversations had between Chin Poy and the petitioner, in which the short-wave radio was used, took place in petitioner's laundry to which the general public was invited, petitioner can not now be heard to complain about the invasion of his premises by Chin Poy entering by means of subterfuge, nor can petitioner now claim this was tantamount to a trespass by a Government agent. The Government completely ignores the testimony of petitioner and the comments of the trial court in respect to the visits of Chin Poy to the premises of petitioner. On cross examination concerning the visit of Chin Poy to his premises we find the petitioner testifying as follows:

“ * * * A. I never said anything like that to him. I never speak to a man that uses drugs and I chased him away from my place.

Q. You say you chased him away? A. Yes, I chased him away" (R. 295).

Shortly thereafter the Court, in commenting upon the visits of Chin Poy to petitioner's premises, said:

“The Court: He came back after that. He was not asked to come back, you used the word 'invite'. He did not make the statement 'come back'. He said that he came back of his own choice. That runs through his testimony" (R. 296).

Further on we find the following testimony of petitioner in respect to the visits of Chin Poy:

“Q. Did you ask him to come over to see you at your laundry in Hoboken? A. Every time I chased him away.

A. I don't remember the exact day. All together he came to my laundry twice and every time I chased him away” (R. 298).

In reading the foregoing testimony of petitioner it must be borne in mind that this was developed upon cross examination by the District Attorney, who was in effect making the petitioner his own witness since it concerned collateral matter which had not been alluded to upon the direct testimony of the petitioner. Despite these statements and denial of petitioner as to invitation either general or express, to Chin Poy to visit him at petitioner's premises, the learned District Attorney did not see fit to produce Chin Poy to contradict the testimony of petitioner and it is respectfully submitted that, therefore, both the District Attorney and the jury were bound by these answers. This, we believe, effectively destroys the argument appearing at page 13 of the opposing Brief that since the general public might be considered to be invited to enter petitioner's premises the Government employee, Chin Poy, could not be considered as a trespasser or intruder.

In *Davis v. U. S.*, 328 U. S. 582, cited in the Government's Brief, the facts were altogether different since in that case the Government agents actually transacted business on the premises in question and observed other illegal transactions taking place in their presence.

CONCLUSION

Petitioner respectfully submits that no good cause having been offered in opposition to the petition for a Writ of Certiorari, same should be granted.

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